

163 L. Ed. 2d 1125 (2006)


WHEREAS, upon reconsideration in light of the Department of Labor's Wage and Hour Advisory Memorandum ("DOL Memo"), the Second Circuit adhered to its original position ("Second Coke Decision"). See Coke v. Long Island Care at Home, Ltd., 462 F.3d 48 (2d Cir. 2006); and

WHEREAS the Defendants-Appellants, Long Island Care at Home, Ltd., et al., have petitioned the U.S. Supreme Court for certiorari to hear an appeal of the Second Coke Decision, and such petition is pending;

IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiff SHAWANDA PIERCE, Individually, and on Behalf of All Other Persons Similarly Situated ("Plaintiff") and Defendant PROGRESSIVE HOME HEALTH SERVICES, INC. ("Defendant"), through their undersigned attorneys who state that they have been authorized to enter into this Stipulation And Tolling Agreement, that:

- (1) Defendant waives any defense based on lack of personal jurisdiction or improper or defective service of process.
- (2) This action is stayed until the petition to the U.S. Supreme Court for certiorari is denied or if not denied, until the date of a decision on the appeal of Defendants-Appellants, Long Island Care at Home, Ltd., et al., is entered (the "Stay End Date").
- (3) Defendant will answer, move or otherwise respond to the Complaint within 30 days after the Stay End Date
- (4) From the date of the execution of this Stipulation to the Stay End Date, Defendant agrees that the statutes of limitations applicable under the FLSA and the New York

Labor Law are tolled as to non-exempt employees of Defendant, who are similarly situated to Plaintiff.



Bruce E. Menken, Esq. (BEM 1140)
Attorney for Plaintiff, Individually,
and On Behalf of All Other Persons Similarly Situated
BERENBAUM MENKEN BEN-ASHER
& BIERMAN LLP
80 Pine Street
New York, New York 10005
(212) 228-9795



Felice B. Ekelman (FE 5692)
Attorneys for Defendant
JACKSON LEWIS LLP
59 Maiden Lane
New York, New York 10038-4502
(212) 545-4000

Prisoner
Dated: November 4, 2006
New York, New York

Deputy
Dated: November __, 2006
New York, New York

This case is placed on the suspense calendar.

SO ORDERED:


Hon. P. Kevin Castel, U.S.D.J.

12-7-06

Dated: November __, 2006
New York, New York